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OFFICE OF PETITIONS

Applicant: Ruben et al.
Appl. No.: 09/853,161
Filing Date: May 11, 2001
Title: 28 HUMAN SECRETED PROTEINS
Attorney Docket No.: PZ003P3
Pub. No.: US 2002/0076756 A1
Pub. Date: June 20, 2002

This is a decision on the request for corrected patent application publication under 37 CFR 1.221(b), filed on August 13, 2002 for the above-identified application.

The request is DISMISSED.

Applicant requests that the application be republished because the patent application publication omits some of the continuity data on the front page of the published application. Applicant argues that the mistake is material because the missing priority data affects the use of the published application as prior art under 35 U.S.C. § 102(e), as a member of the public would be unable to determine the correct effective date of the publication as a reference.

37 CFR 1.221(b) is applicable "only when the Office makes a material mistake which is apparent from Office records." A material mistake must affect the public's ability to appreciate the technical disclosure of the patent application publication, to determine the scope of the patent application publication, or to determine the scope of the provisional rights that an applicant may seek to enforce upon issuance of a patent.¹ The instant request does not identify a material mistake in the publication made by the Office:

The error in the continuity claim on the first page of the publication is an Office mistake, but it is not a material mistake as required by 37 CFR 1.221(b). The improper priority claim is not a material mistake because it does not affect the public's ability to appreciate the technical disclosure of the patent application publication, to determine the scope of the patent application publication or to determine the scope of the provisional rights that an applicant may seek to enforce upon issuance of a patent. The first line of the specification contains the entire priority claim with all of the applications listed, thus one can read and understand the content of the application and properly use the patent application publication as a prior art reference, because all of the priority data is correctly published.

The applicant is advised that a "request for republication of an application previously published" may be filed under 37 CFR 1.221(a). Such a request for republication "must include a copy of the

¹Changes to Implement Eighteen-Month Publication of Patent Applications, 65 FR 57023, 57038 (Sept. 20, 2000), 1239 Off. Gaz. Pat. Office Notices 63, 75 (Oct. 10, 2000) (final rule).

application in compliance with the Office's electronic filing system requirements and be accompanied by the publication fee set forth in § 1.18(d) and the processing fee set forth in § 1.17(i)." If the request for republication does not comply with the electronic filing system requirements, the republication will not take place and the publication fee set forth in § 1.18(d) will be refunded. The processing fee will be retained.

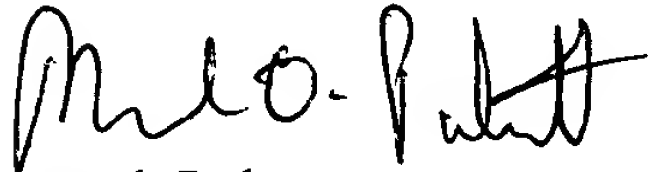
The application is being forwarded to Technology Center 1600 to await further examination in due course.

Any request for republication under 37 CFR 1.221(a), should be submitted via the EFS system and any question or request for reconsideration of this decision, should be addressed as follows:

By mail to: Box PG PUB
 Commissioner for Patents
 Washington DC 20231

By facsimile: 703-305-8568

Inquiries relating to this matter may be directed to Mark Polutta at (703) 308-8122 (voice) or (703) 746-3465 (facsimile).



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